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AMERICAN LOCOMOTIVE CO. et al. v. WHITLOCK.

March 11, 1909.

[63 S. E. 991.]

1. Master and Servant (§ 155*)—Injuries to Servant—Warning.—If the danger to which a servant is exposed is open and obvious, it is one of the risks incident to the employment, and it is not the duty of the master to warn him thereof.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 310; Dec. Dig. § 155.* 9 Va.-W. Va. Enc. Dig. 694 et seq.]

2. Master and Servant (§ 280*)—Injury to Servant—Assumption of Risk—Sufficiency of Evidence.—Evidence held to show that the danger to which plaintiff was exposed was open and obvious, and that plaintiff knew, or by the exercise of ordinary care could have known, thereof.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 983; Dec. Dig. § 280.* 9 Va.-W. Va. Enc. Dig. 694 et seq.]

3. Trial (§ 296*)—Instructions—Curing Error.—The error of an instruction, complete in itself, is not cured by a subsequent instruction on the same subject, stating the law correctly.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 713; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 744, 745.]

4. Witnesses (§ 390*)—Purpose of Testimony—Impeachment.—Testimony of a witness who knows nothing about the custom sought to be shown except what he had heard other witnesses say, is admissible for the purpose of impeaching the credibility of such witnesses.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 1247; Dec. Dig. § 390.* 13 Va.-W. Va. Enc. Dig. 966-969.]

5. Master and Servant (§ 278*)—Injuries to Servant—Warning of Danger—Custom—Sufficiency of Evidence.—Evidence in an action for injuries to a servant held insufficient to show the existence of a custom by defendant to warn servants of danger when engaged in such work as plaintiff was doing when injured.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 972; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 686, 694 et seq.]

6. Trial (§ 139*)—Instructions—Sufficiency of Evidence to Support.—Since the abolition of the scintilla doctrine, an instruction ought not to be given when the evidence on which it is based is insufficient to sustain a verdict.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 338; Dec. Dig. § 139.* 7 Va.-W. Va. Enc. Dig. 718.]

7. Trial (§ 260*)—Refusing Instructions.—The refusal of a requested instruction is not error, where the substance thereof is fully covered by instruction given.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 651; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 708.]

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs, 1907 to date, and Reporter Indexes.